

THE CHAIRMAN: Delegate Bothe.

DELEGATE BOTHE: The question is simply where are the waters muddied? Where possibly could there be any conflict or confusion through the existence of this provision, which simply states a principle which the courts would have to follow?

THE CHAIRMAN: Delegate Henderson.

DELEGATE HENDERSON: I think that has been sufficiently explained by some of the other speakers. When you give a constitutional right to release in a matter of this kind, you create limitations of various sorts upon the right to hold, which I think is undesirable, as has been pointed out.

THE CHAIRMAN: Delegate Bothe, do you desire to allot any further time for debate?

DELEGATE BOTHE: I understand I have six minutes.

THE CHAIRMAN: That is correct.

DELEGATE BOTHE: I will allot three of them to Delegate Bennett.

THE CHAIRMAN: Delegate Bennett.

DELEGATE BENNETT: Ladies and gentlemen of the Convention, I think this is a very important proviso to include in the constitution.

Judge Child has said that this is unnecessary. Well, for nearly a hundred years we had the other proviso in the Constitution of Maryland in effect, and yet people were being held in jail, subjected to the corrupting influences of the jail, merely because they were poor. Not until the other states demonstrated the possibility of releasing people on their own recognizance, permitting them to hold their jobs, holding together their families, did Maryland take any action.

It is important it seems to me, to include this in for that reason. As it is now, in large sections of the State an arbitrary list of bail requirements are included and made available for the committing magistrate without any reference whatsoever to the possibility that the person is going to show up for trial, and there cannot be any question that on occasion this is used as a method of punishment.

They are setting high bail or they are refusing bail. They do this largely because of the fact they are judging a person guilty prior to trial.

In addition to that, it is a system of preventative detention, which every Ameri-

can shuns. We do not want any method where the court can arbitrarily lock up a person on the theory that possibly he might commit a crime of one kind or another.

I urge rejection of the minority report.

THE CHAIRMAN: Delegate Bothe.

DELEGATE BOTHE: The remaining time is three minutes?

THE CHAIRMAN: Approximately.

DELEGATE BOTHE: I will yield to Delegate Bamberger.

THE CHAIRMAN: You have about four minutes.

Delegate Bamberger.

DELEGATE BAMBERGER: Mr. Chairman, ladies and gentlemen of the Convention, the supporters of the minority report argue that section 8 and section 5-B are redundant. I submit that is a simplistic argument. It avoids the issue and perhaps avoids it because this amendment does put to us a difficult question.

They are not redundant and not repetitive. Section 8 says that if bail is set it shall not be excessive, it shall not be so high that it is unreasonable, considering the nature of the crime charged, and the nature of the defendant, but section 5 says more. Section 5-B says that the General Assembly shall never in any moment of public outrage about particular crimes, in any moment of particular passion say that a person arrested for this crime shall not be admitted to bail.

What it puts to us is the question of whether or not we are willing to implement that particular concern of our civilization which sets us apart from so many others, that statement that no man is guilty until proven guilty, that statement that every man, no matter how charged with a crime, no matter how serious the crime, is innocent, absolutely innocent until he has a trial under due process of law, a fair trial, in which he is found guilty.

Those words appear nowhere in this constitution, but now we are asked to put words in the constitution which implement that principle. We all find it difficult to implement that principle.

How many times do you read in the newspaper the account of a particular crime, the account of the defendant, and been assured that man is guilty? How many of you have served on a criminal jury and found how difficult it is to imple-